

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 22, 2011

In the Matter of A. T. BARBER II, Minor.

No. 303540
Genesee Circuit Court,
Family Division
LC No. 09-124936-NA

Before: MURPHY, C.J., and BECKERING and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent contends that the trial court clearly erred in terminating her parental rights under each of the statutory grounds relied on by the court. We disagree. Termination of parental rights is appropriate where a court finds that petitioner proved one or more of the statutory grounds for termination by clear and convincing evidence and that termination of parental rights is in the child's best interests. MCL 712A.19b(3) and (5); *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re B & J*, 279 Mich App 12, 18; 756 NW2d 234 (2008). This Court reviews the lower court's findings under a clearly erroneous standard. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999).

In the present case, the trial court did not clearly err in finding clear and convincing evidence that satisfied the statutory grounds. Respondent's court-ordered parent agency agreement (PAA) required her to have counseling for victims of domestic violence and have parenting classes, to attend visitations, to have a psychological evaluation and counseling if recommended, to take prescribed medications as directed, to attend a substance abuse assessment, and to undergo drug screens. Respondent partially complied with her PAA. Her drug screens were negative and the court found that she did not have a drug problem. Respondent also completed counseling for domestic violence and parenting classes. She attended most visitations and her parenting skills were overall appropriate. Respondent had an ongoing case involving an older child and had received services including counseling. While the court had allowed the younger child to live with respondent and her mother at first, this did not work out because respondent failed to cooperate. In both cases, the children suffered from severe medical neglect. The oldest child had been found alone and unconscious in respondent's home and was taken to the hospital, where he was diagnosed with and treated for dehydration.

The child at issue here had been taken to the hospital, dehydrated and vomiting, and was found to be suffering from severe conjunctivitis that had spread to the child's forehead and scalp.

In this case, respondent did not comply with requirements to address her mental health problems, which was "a huge issue" according to the trial court. Respondent did not attend two appointments for her psychological evaluation. This would have given the agency and court information to assess respondent's intellectual functioning and to assign appropriate counseling. Respondent had spent the holidays in a hospital's psychiatric ward, where she was diagnosed with episodic mood disorder and psychosis and prescribed Prozac and Risperdal. Respondent stopped taking these medications, allegedly on the advice of a doctor because she thought she was pregnant. When she found out that she was not pregnant, though, she did not resume the medications.

Respondent also lacked appropriate housing for much of the time. She was ejected from the home of the child's paternal grandmother or great-aunt because of fighting with the child's father. Respondent later returned to that home. Previously, she spent time at a shelter, with friends, and in an apartment that she had to leave. She did receive Social Security Disability for her bipolar disorder. Over the 13 months between disposition and termination, respondent failed to benefit sufficiently from services, and clear and convincing evidence supported the trial court's ruling that she would be unable to do so within a reasonable time.

In light of the past medical neglect, the inadequately addressed and ongoing mental health problems and the lack of consistent and appropriate housing, we cannot conclude that the trial court committed clear error in finding that the statutory grounds for termination were established by clear and convincing evidence. Respondent makes no argument with respect to the child's best interests, and even if raised, the record supports a conclusion that the trial court did not commit clear error on the matter.

Respondent also contends that the court, petitioner, and service provider Ennis Center for Children failed to comply with the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.* In the context of the ADA's relationship to Michigan's statutory scheme governing the termination of parental rights, if petitioner "fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). Accommodations under the ADA should be sought when the case service plan is adopted or soon afterward. *Id.* "Any claim that the parent's rights under the ADA were violated must be raised well before a dispositional hearing regarding whether to terminate . . . parental rights, and the failure to timely raise the issue constitutes a waiver." *Id.* at n 5. As in *Terry*, it appears that the issue was not raised in timely fashion. The first mention was in respondent's counsel's opening statement at the termination hearing. Nevertheless, respondent was provided with assistance and extra services tailored to her needs. Petitioner and Ennis Center were aware of respondent's problems with reading, forgetfulness, and mental illness. The caseworker made respondent a calendar with appointments, visits, and services, and reminded her more than once of appointments. Bus passes were provided for every visit and service. The infant mental health worker also offered respondent transportation and to meet at respondent's home. She and the caseworker would read materials to or with respondent and made sure she understood them. However, respondent would not avail herself of the most crucial tools for reunification, those dealing with mental health. Petitioner and Ennis provided sufficient assistance and services, but

respondent failed to cooperate and insisted that she did not need the services or her medications. Even with added time and services, it is very unlikely that respondent could improve sufficiently to provide an adequate home for her child. Reversal is unwarranted.

Affirmed.

/s/ William B. Murphy
/s/ Jane M. Beckering
/s/ Amy Ronayne Krause